



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 17, 1998

Ms. Laura S. Portwood  
Senior Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR98-0739

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113940.

The City of Houston (the "city") received a request for the city's entire file on an individual who applied for employment with the Houston Fire Department. You state that the city released to the requestor information the applicant supplied to the city and information the applicant had access to during the application process. You assert that the remaining information is excepted from required public disclosure based on section 552.103 of the Government Code.

The city asserts that section 552.103 applies to the requested information because the information relates to both pending and reasonably anticipated litigation. Section 552.103(a) applies to information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5. On the other hand, several threats to sue and the hiring of an attorney for the purpose of carrying out the threat is evidence that litigation is reasonably anticipated against a governmental body. See Open Records Decision No. 288 (1981).

The city asserts that the requested information relates to the pending case of *Pierce v. City of Houston*, No. 97-59415 (270th Dist. Ct., Harris County, Tex, Dec. 22, 1997). The city also asserts that the information relates to litigation it anticipates from unsuccessful Fire Department applicants.

We have reviewed the city's arguments and submitted information. We conclude that the city has not established that the requested information relates to pending or reasonably anticipated litigation. Accordingly, the city may not withhold the information from the requestor based on section 552.103.<sup>1</sup>

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

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<sup>1</sup>The information requested contains polygraph examination results. By statute, the city may, but is not required to, disclose these results to the requestor. V.T.C.S. art. 4413(29cc) § 19A; see Open Records Decision No. 481 (1987) at 9.

Ref.: ID# 113940

Enclosures: Submitted documents

cc: Mr. Craig A. Sodolak  
8539 McDade  
Houston, Texas 77080  
(w/o enclosures)